IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

WP(C).No. 28342 of 2007(Y)

PETITIONERS:
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1. **BALAN, AGED 52,**
   S/O. RAMAN, RESIDING AT KANJIRAVELI HOUSE,
   PERINGALA P.O., PINARMUNDA, PIN-683 565,
   KUNNATHUNADU VILLAGE, KUNNATHUNADU TALUK,
   ERNAKULAM DISTRICT.

2. **BHASKARAN, AGED 54,**
   S/O.RAMAN, RESIDING AT KANJIRAVELI HOUSE,
   PERINGALA P.O., PINARMUNDA, PIN-683 565,
   KUNNATHUNADU VILLAGE, KUNNATHUNADU TALUK,
   ERNAKULAM DISTRICT.

BY ADV. SRI.K.C.ELDHO

RESPONDENTS:
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1. **STATE OF KERALA,**
   REPRESENTED BY SECRETARY TO THE GOVERNMENT,
   DEPARTMENT OF IRRIGATION, GOVT.SECRETARIAT,
   TRIVANDRUM.

2. **EXECUTIVE ENGINEER,**
   PERIYAR VALLEY IRRIGATION PROJECT (HEREINAFTER
   REFERRED TO AS PVIP), OFFICE OF THE PVIP,
   SUB DIVISION NO.II, PERUMBAVOOR, ERNAKULAM.

3. **ASSISTANT ENGINEER,**
   PVIP, OFFICE OF THE PVIP, PERUMBAVOOR
   SUB DIVISION NO.II, PERUMBAVOOR, ERNAKULAM DIST.

4. **OFFICE OF THE TALUK SURVEYOR,**
   KUNNATHUNADU TALUK, PERUMBAVOOR,ERNAKULAM DISTRICT

5. **DIRECTOR,**
   VIGILANCE AND ANTI CORRUPTION BUREAU, TRIVANDRUM.

6. **C.I. SULAIMAN, AGED 52 YEARS,**
   S/O. ISMAIL, CHELLIPADATH (PEEDIKAYIL) HOUSE,
   PINARMUNDA, PERINGALA P.O., KUNNATHUNADU VILLAGE,
   KUNNATHUNADU TALUK, ERNAKULAM DISTRICT.

BY GOVERNMENT PLEADER SRI.I.V.PRAMOD

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.
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W.P.(C) NO. 28342 OF 2007
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Dated this the 25th day of September, 2007

J U D G M E N T

The prayer in this writ petition is to quash Ext.P5 and to direct respondents not to commence any further proceedings on the basis of Exhibits P6, P7 and P8. Petitioner alleges that the 6th respondent is a real estate agent, who bought the property behind the petitioner's plot of land. It is alleged that thereafter, he had approached the petitioner for giving him a right of way for consideration, which was not acceptable to the petitioner. It is also alleged that thereafter the 6th respondent approached the 3rd respondent and succeeded in getting Ext.P5 authorising him to construct a protection wall in the canal and to make a right of way over the same. According to him, Ext.P5 is illegal for the reason that the Assistant Executive Engineer, who issued the order has no authority to issue the said order. This is only on the ground on which Ext.P5 was attacked. It is also submitted that based on Ext.P5, with the assistance of the Taluk Surveyor,

survey was attempted referring to Ext.P8 sketch. Petitioner submits under the cover of survey, attempt was to trespass into his property. According to him, Ext.P9 is the accurate sketch and if a comparison is made between Exhibits P8 and P9, it is obvious that the endeavour was to commit trespass into his property. Petitioner also makes reference to the land acquisition records particularly Ext.P2, to support his contention of encroachment.

2. As far as the validity of Ext.P5 is concerned, the only ground urged is that the Assistant Executive Engineer, who has not been impleaded in this writ petition is incompetent to issue the same. Apart from making such an averment in this writ petition, petitioner has not produced any material in support thereof nor has he impleaded the Assistant Executive Engineer in this case.

3. What is done in Ext.P5 is that the 6th respondent is permitted to construct a side protection wall at his cost and that a condition that the same will be dismantled as and when required by the Department. Through the area he is allowed to develop, the 6th respondent being the adjacent land owner, is

permitted a right of way, I do not find anything irregular in the conduct.

4. Though allegations have been raised against the Assistant Executive Engineer, I am not able to take cognizance to say, since he has not been made a party to this writ petition. As regards the claim of the petitioner that the attempt is to encroach into his property on the basis of Ext.P8 sketch, in my view, that is a matter for which the petitioner should approach the Civil Court especially when the allegation is raised against a private individual, namely the 6th respondent. This court will not be justified in extending its jurisdiction under Article 226 of the Constitution of India into civil disputes such as boundary disputes.

Writ petition fails and is dismissed.

ANTONY DOMINIC, JUDGE.

Rp